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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 FAZLIDDIN KURBANOV,

16 Defendant.

No. CR 17-00091-VAP

GOVERNMENT'S OBJECTIONS TO PSR AND  
POSITION REGARDING SENTENCING;  
DECLARATION OF ELIZABETH R. YANG;  
EXHIBITS

Hearing Date: June 4, 2018

Hearing Time: 9:00 a.m.

Location: Courtroom of the  
Honorable Virginia  
A. Phillips

19 Plaintiff United States of America, by and through its counsel  
20 of record, the United States Attorney for the Central District of  
21 California and Assistant United States Attorney Elizabeth R. Yang,  
22 hereby files its Objections to the Presentence Investigation Report  
23 prepared for defendant Fazliddin Kurbanov and its Position regarding  
24 Sentencing in this matter.

25 The government's position is based upon the attached memorandum  
26 of points and authorities, declaration of Elizabeth R. Yang with  
27 attached exhibits, the United States Probation Office's Presentence  
28 Investigation Report and recommendation letter, the victim impact

1 statement which will be made orally to the Court at the sentencing  
2 hearing, the files and records in this case, and such further  
3 evidence and argument as the Court may permit.  
4

5 Dated: May 14, 2018

Respectfully submitted,

6 NICOLA T. HANNA  
United States Attorney

7 PATRICK R. FITZGERALD  
8 Assistant United States Attorney  
9 Chief, National Security Division

10 /s/ Elizabeth R. Yang  
11 ELIZABETH R. YANG  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On March 13, 2018, defendant Fazliddin Kurbanov ("defendant") pleaded guilty pursuant to a written plea agreement to Count One of the Indictment, charging him with attempting to murder the then Warden of the Victorville Federal Correctional Institution Medium II, in violation of 18 U.S.C. §§ 1114(3), 1113.<sup>1</sup> At the time defendant attempted to kill the Warden, he was serving a 25-year sentence for federal terrorism-related convictions out of the District of Idaho.

Undeterred by the lengthy sentence, defendant set about planning the murder of the Warden, including making a shank the week before the attack, testing the shank days before the attack to see if it would set off the metal detector, and purposefully walking to the mess hall with the shank concealed in his shoe, directly approaching the Warden, and attacking the Warden with the shank. Fortunately, the Warden's quick defensive reflexes thwarted defendant's attempt to slit his throat, but defendant still managed to slash the left side of the Warden's body from armpit to hip bone before being taken down by other staff members.

For this conduct and his resulting conviction, defendant faces an advisory Guidelines sentence as well as a statutory maximum punishment of 20 years' imprisonment.<sup>2</sup> To account for the premeditated and brutal nature of his crime, the unimaginable pain

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<sup>1</sup> Defendant was charged in a three-count Indictment. (CR 1.)

<sup>2</sup> In exchange for defendant's agreement to plead guilty to Count One which carries a statutory maximum term of imprisonment of 20 years, the government has agreed to dismiss the remaining two counts at the time of sentencing. (Plea Agreement (CR 24) ¶ 3.c.) Those two counts carry an additional combined statutory maximum of 25 years' imprisonment. (Id. ¶ 3.c. & n.1.)

1 and ongoing trauma suffered by the victim, and the ongoing danger  
2 posed by defendant, the government respectfully submits that a  
3 sentence of 20 years' imprisonment to run fully consecutive to the  
4 25-year sentence defendant was serving at the time of the offense is  
5 the only appropriate and just sentence in this case.

## 6 **II. RELEVANT FACTS**

7 On January 7, 2016, defendant was sentenced in the District of  
8 Idaho to a total term of 25 years' imprisonment following his  
9 convictions for conspiracy to provide material support to a  
10 designated foreign terrorist organization, attempt to provide  
11 material support to a designated foreign terrorist organization,  
12 and possession of an unregistered firearm (explosive device). (PSR  
13 ¶ 41.) He was subsequently designated to the Victorville Federal  
14 Correctional Complex in the Central District of California to serve  
15 his sentence.

16 Within weeks of arriving at Victorville, defendant, who believed  
17 that he had been wrongly convicted by the federal government, plotted  
18 to kill the highest ranking member of the federal government in his  
19 presence, Warden C.J. ("the Warden"). (Yang Decl. ¶ 2, Ex. A  
20 (translation/transcript of 7/20/16 interview) at Bates Nos. 219-25,  
21 259-60, 303.) As defendant later admitted to law enforcement, "the  
22 many chapter [likely referring to the Koran] say . . . [to] cut off  
23 . . . or kind of beat [the Chief]" and "so that's was the point [UI]  
24 yeah. I tried to cut off [the Warden's] head or whatever happened.  
25 I, I did best I can." (*Id.* at Bates No. 260; see also *id.* at Bates  
26 Nos. 288-89.) To accomplish his goal, in or around mid-May of 2016,  
27 defendant assembled an approximately four-inch shank using two metal  
28 razor blades, a piece of wood, and the sticky label from a deodorant

1 stick. (Ex. A at Bates Nos. 242-49; Ex. B (photograph of shank);  
2 PSR ¶ 16.b.) Defendant then carried the shank in his shoe to the  
3 recreation yard to test whether the metal razor blades in the shank  
4 would set off the metal detector. (Ex. A at Bates No. 254-55; PSR  
5 ¶ 16.c.) When they did not, defendant proceeded with his plan to  
6 attack the Warden.

7 Recognizing that Monday, May 30, 2016, was a federal holiday,  
8 defendant anticipated that the Warden would not be at his usual  
9 position -- standing in the dining facility near the serving line at  
10 meal time, so he planned his attack for Tuesday. (Ex. A at Bates No.  
11 253-54.) The next day, after concealing the shank in his shoe,  
12 defendant proceeded undetected through the metal detector to the  
13 dining facility. (Id. at Bates No. 254-55.) As he passed through  
14 the outer door of the dining facility and approached the inner door,  
15 he stopped and removed the shank from his shoe and slipped it into  
16 his left pocket. (Id. at Bates No. 255-57.) Defendant then stood in  
17 line, collected a tray, cup, and spoon, and proceeded to the food  
18 serving line where the Warden was standing. (Id. at Bates Nos. 257-  
19 58.) Once he got close to the Warden, defendant approached the  
20 Warden from behind, wrapped his right arm around the Warden's neck,  
21 and grabbed the Warden's jaw. (Id. at Bates Nos. 258-59; Ex. C  
22 (photograph of area of dining facility area where attack occurred).)  
23 The Warden instinctively raised his hands to protect his throat and  
24 turned around in an attempt not to allow defendant to get him in a  
25 chokehold. (PSR ¶¶ 14, 20.a.) Wielding the shank in his left hand,  
26 defendant attempted to bring the shank up to the Warden's neck but  
27 another staff member grabbed defendant's left hand. (Ex. A at Bates  
28 No. 259, 261-63.) As defendant struggled with the other staff

1 member,<sup>3</sup> he tried cutting the Warden wherever he could and ultimately  
2 slashed the left side of the Warden's body from armpit to hip bone.  
3 (Id. at Bates Nos. 263-64; PSR ¶ 14.) Approximately 80 staples were  
4 needed to close the wound and in the ensuing weeks, the Warden  
5 required additional medical attention to stop the bleeding and clean  
6 the wound. (PSR ¶¶ 14, 21.a.) Although the wound healed, the Warden  
7 has a permanent disfiguring scar and suffers from recurring sharp  
8 pains caused by nerve damage. (Id. ¶¶ 14, 21.d.) In addition to the  
9 physical damage, the attack has exacted an emotional toll on the  
10 Warden and his family, including his mother who became so distraught  
11 upon learning of the attack that she had to be hospitalized. (Id.  
12 ¶¶ 21.e., 22.)<sup>4</sup>

13 Following the attack, defendant fully confessed to his  
14 premeditated attack on the Warden, including his specific targeting  
15 of the Warden and his unequivocal intent to kill the Warden by  
16 cutting the main vein in his neck. (Ex. A at Bates Nos. 219, 264-65,  
17 272; PSR ¶ 16.) Defendant also expressed a desire to plead guilty  
18 early in the case (Ex. D (note from defendant)) and ultimately  
19 pleaded guilty to Count One. (See generally Plea Agreement.) To  
20 date, defendant has not, however, expressed any remorse towards the  
21 Warden. (See Ex. A at Bates Nos. 292, 306-308.) Rather, defendant  
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23 <sup>3</sup> Defendant repeatedly refused to comply with staff orders to  
24 drop the shank, necessitating staff to physically restrain him and  
25 use pepper spray to gain control over him. (PSR ¶ 15.) As a result  
26 of the struggle, two staff members were also injured. (Id. ¶ 15,  
n.1.) Both staff members have declined to submit a victim impact  
statement.

27 <sup>4</sup> At defendant's sentencing hearing, pursuant to the Crime  
28 Victims' Rights Act, the Warden intends to present an oral statement  
of the impact that the attempt on his life has had on him and his  
family.



1 has stated that he would only be willing to apologize to the staff  
 2 members who were injured in the attempt to disarm him since they were  
 3 not his intended targets. (Id.)

4 Post-offense, defendant has continued to make threats of  
 5 violence against prison staff, stating that he will specifically  
 6 target and seek to kill any prison staff that served in the U.S.  
 7 military and/or served in Iraq or Afghanistan. (Ex. E (report of  
 8 threats).) Defendant has also admitted to being homicidal. (Id.)

9 **III. GOVERNMENT'S OBJECTIONS, CORRECTIONS, AND/OR COMMENTS TO THE**  
 10 **PRESENTENCE INVESTIGATION REPORT PREPARED FOR DEFENDANT**

11 • Post-Offense Conduct: The PSR does not include any  
 12 information about the threats of violence against prison staff made  
 13 by defendant following his arraignment and detention in this case.  
 14 (See supra Section II; see also Ex. E.) The information is not only  
 15 relevant to the Court's determination of the appropriate sentence to  
 16 impose in this case, but since a PSR follows an inmate throughout  
 17 his/her incarceration in the Bureau of Prisons and during supervision  
 18 by the Probation Office, the government submits that it is vitally  
 19 important that information about the danger posed by defendant be  
 20 included. Accordingly, the government objects to its omission from  
 21 the PSR.

22 • Part D. Sentencing Options / Supervised Release (§§ 102,  
 23 103): The PSR states that pursuant to 18 U.S.C. § 3583(b)(2) and  
 24 U.S.S.G. § 5D1.2(a)(2), the statutory term of supervised release for  
 25 defendant's offense of conviction is "not more than three years" and  
 26 the Guideline range is "1 year to 3 years." (PSR §§ 102, 103.) 18  
 27 U.S.C. § 3583(j) and U.S.S.G. § 5D1.2(b) provide, however, that if an  
 28 offense of conviction is listed in 18 U.S.C. § 2332b(g)(5)(B), the

1 authorized term of supervised release is up to life. See 18 U.S.C.  
 2 3583(j) ("any term of years or life"); U.S.S.G. § 5D.2(b)(1) ("may be  
 3 up to life"). Because 18 U.S.C. § 1114 (defendant's offense of  
 4 conviction) is a listed offense in 18 U.S.C. § 2332b(g)(5)(B), the  
 5 Court is not limited to imposing a three-year term of supervised  
 6 release, but may impose a term up to life.<sup>5</sup> The government therefore  
 7 requests that this portion of the PSR be corrected.

8 • Part D. Sentencing Options / Guideline Provisions (§ 99):

9 The PSR states that the guideline imprisonment range is 360 months to  
 10 "zero life." The government believes that "zero" should be deleted.

11 **IV. SENTENCING ANALYSIS**

12 **A. The Advisory Guidelines Support A 20-Year Consecutive**  
 13 **Sentence**

14 All sentencing proceedings must begin by calculating correctly  
 15 the applicable Sentencing Guidelines range. United States v. Carty,  
 16 520 F.3d 984, 991 (9th Cir. 2008) (en banc). The advisory Guidelines  
 17 are "the starting point and the initial bench mark and are to be kept  
 18 in mind throughout the process." Id. at 991 (internal quotation and  
 19 citation marks omitted).

20 As set forth in the PSR, the Probation Office concurs with the  
 21 Guidelines calculations agreed to by the parties in the plea  
 22 agreement.<sup>6</sup> (PSR § 101.) More specifically, the parties and the

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24 <sup>5</sup> In the plea agreement, defendant was advised that he faced  
 25 up to a lifetime period of supervised release. (See Plea Agreement  
 § 4.)

26 <sup>6</sup> The parties have also agreed not to seek, argue, or suggest  
 27 in any way, either orally or in writing, that any other specific  
 28 offense characteristics, adjustments, and departures relating to the  
 offense level be imposed. (Plea Agreement § 13; PSR § 5.)

1 Probation Office have calculated defendant's total offense level as  
2 follows:

3	Base Offense Level:	33
4	Permanent Bodily Injury:	+4
5	Official Victim:	+6
6	Acceptance of Responsibility:	-3
7	Total Offense Level:	40

8 (Plea Agreement ¶ 13; PSR ¶¶ 26-36.) With a Criminal History  
9 Category of III (PSR ¶¶ 41-44), absent the statutory maximum for the  
10 offense of conviction, the applicable Sentencing Guidelines range  
11 would be 360 months to life imprisonment. (Id. ¶ 99.) Given the 20-  
12 year statutory maximum for the offense of conviction, however, the  
13 applicable Guidelines sentence for defendant is a term of  
14 imprisonment of 240 months (20 years) and up to a lifetime period of  
15 supervised release. (Id.)

16 In addition, the Guidelines counsel that if a defendant commits  
17 an offense while already serving a term of imprisonment, the sentence  
18 for the instant offense "shall be imposed to run consecutively to the  
19 undischarged term of imprisonment." U.S.S.G. § 5G1.3(a) (emphasis  
20 added). Here, at the time defendant attempted to kill the Warden, he  
21 was serving a 25-year prison sentence imposed in United States v.  
22 Kurbanov, 13-00120-EJL, District of Idaho ("the District of Idaho  
23 case"). (PSR ¶¶ 41, 43.) A 20-year consecutive sentence is thus  
24 fully supported by the Guidelines.<sup>7</sup>

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26 <sup>7</sup> The parties have agreed that at least 15 years of the 20-year  
27 statutory and Guideline term of imprisonment shall run consecutive to  
28 the term of imprisonment previously imposed in the District of Idaho  
case. (Plea Agreement ¶ 15.) The only issue reserved by the parties  
for argument is whether the remaining 5 years shall run concurrent or  
consecutive to the District of Idaho sentence. (Id.)

**B. The 18 U.S.C. § 3553(a) Factors Support A Sentence Of 20 Years' Imprisonment To Be Served Consecutively And A Lifetime Term Of Supervised Release**

An analysis of the 18 U.S.C. § 3553(a) factors also fully supports a 20-year consecutive sentence for defendant. As noted above, the Sentencing Commission has determined that a consecutive sentence of 360 months up to life imprisonment is appropriate for defendant's attempt to kill the Warden. Because of the statutory maximum for the offense, however, defendant faces a sentence of 240 months (20 years), which is significantly below the otherwise applicable Guidelines range. It is also significantly below the 45-year statutory maximum sentence that defendant could have received if he had been convicted on all three counts in the Indictment.

Nonetheless, the government submits that a 20-year consecutive sentence is the appropriate sentence in this case because although the seriousness of the offense and the danger defendant poses cannot be overstated, defendant voluntarily met with and fully admitted his criminal conduct to law enforcement, expressed the desire to plead guilty early in the case, sparing the victim the further trauma of having to publicly re-live the attempt on his life, and ultimately accepted responsibility for his conduct by pleading guilty. In its recommended sentence, and agreement to dismiss the remaining counts at sentencing, the government has accounted for these facts, along with other personal mitigating factors set forth in the PSR.

Accordingly, consistent with the Probation Office's recommendation, the government submits that a sentence of 240 months' imprisonment to be served consecutively to the sentence imposed in

1 the District of Idaho case and a lifetime term of supervised release<sup>8</sup>  
2 is necessary to effectuate the purposes of sentencing set forth in  
3 18 U.S.C. § 3553(a).

4           **1. The need for the sentence imposed to reflect the**  
5           **seriousness of the offense, promote respect for the**  
6           **law, and provide just punishment requires a 20-year**  
7           **consecutive sentence**

8           As the Probation Office succinctly notes, the seriousness of  
9 defendant's offense "cannot be overstated" -- defendant committed  
10 "a heinous, premeditated attack on the warden at a federal prison,"  
11 "has proven to be a danger to all prison staff and individuals in  
12 authority," and "lacks any respect for the law or the value of human  
13 life." (Rec. Ltr. at 5-6.) Not only did defendant viciously attack  
14 the Warden, but he did so during a busy meal service endangering the  
15 lives and safety of other staff members and inmates. He also did not  
16 submit to staff commands and while still armed with the shank,  
17 viciously resisted being restrained, resulting in injuries to two  
18 other staff members. That he tried to kill the Warden while already  
19 serving a substantial prison sentence compounds the seriousness of  
20 defendant's crime and confirms his utter lack of respect for the law.  
21 A 20-year consecutive sentence is required.  
22  
23  
24

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25           <sup>8</sup> The government recognizes that defendant may be subject to  
26 deportation following completion of service of his terms of  
27 imprisonment. (PSR ¶¶ 60, n.3, 104.) However, given the uncertainty  
28 of the deportation process, defendant's violent criminal history and  
mental health issues, and the ongoing danger he poses to persons in  
positions of authority and the public, the government respectfully  
submits that defendant should be subject to supervision for the  
remainder of his natural life should he remain in the United States.

1                   **2. Defendant's history and characteristics support a**  
2                   **20-year consecutive sentence**

3           Although defendant relates that he had "a normal childhood," the  
4 Probation Office characterizes defendant's upbringing as "chaotic."  
5 (PSR ¶ 54; Rec. Ltr. at 6.) Defendant also reports suffering from  
6 mental health issues. (PSR ¶¶ 71-75.) As the Probation Office  
7 notes, however, despite being sympathetic to his upbringing and  
8 recognizing his mental health struggles, defendant has demonstrated  
9 that he is "a violent individual who lacks respect for human life."  
10 (Rec. Ltr. at 6.) This is confirmed by defendant himself who has  
11 expressed no regret or remorse for his vicious attack on the Warden  
12 and continues to threaten violence against prison staff. This  
13 inability to control his violent impulses and adequately adapt his  
14 behavior confirm that defendant is a poor candidate for successful  
15 rehabilitation and demonstrates that he poses an unacceptably high  
16 risk of danger to the community and law enforcement.

17                   **3. A 20-year consecutive sentence is necessary to provide**  
18                   **adequate deterrence to criminal conduct and to protect**  
19                   **the public**

20           It is abundantly clear that a 25-year prison sentence has done  
21 nothing to deter defendant from committing further violent crimes.  
22 It is equally clear that there is an unquestionable need to protect  
23 the public from further criminal conduct by defendant. From his  
24 prior convictions to his recent threats to prison staff, defendant  
25 has demonstrated a disturbing willingness to engage in acts of  
26 violence with little to no provocation. By his actions, defendant  
27 has plainly demonstrated that he cannot conform his behavior with  
28 societal requirements and should therefore be incarcerated for a  
sufficiently lengthy period to protect the public from the additional

1 violent crimes that defendant has demonstrated a ready willingness  
2 and ability to commit. Simply stated, defendant is an extremely  
3 violent individual who the Bureau of Prisons will be forced to watch  
4 very carefully throughout his terms of incarceration due to the  
5 continuing threat he poses to prison staff and others, and the public  
6 should be protected from such an individual for as long as possible.

7 Moreover, the need to deter other inmates from committing acts  
8 of violence while in prison is incredibly important. The need is  
9 particularly acute where, as here, defendant targeted the Warden  
10 simply because of his status and took advantage of the Warden's  
11 desire to be more accessible to inmates to viciously attack him.  
12 Under such circumstances, a less than 20-year consecutive sentence --  
13 the maximum under the law -- would send a message to other inmates  
14 that such heinous conduct will not be severely punished.

15 **4. A 20-year consecutive sentence will avoid unwarranted**  
16 **sentencing disparities**

17 The application of the statutory maximum penalty limitation of  
18 20 years reduces the Guidelines term to 240 months (20 years). (PSR  
19 ¶ 99.) This sentence is significantly below the otherwise applicable  
20 Guidelines range of 360 months to life in prison as well as the 45-  
21 year statutory maximum sentence defendant would have faced if Counts  
22 Two and Three were not to be dismissed pursuant to the plea  
23 agreement. (Id.; Plea Agreement ¶ 3.c.) Nonetheless, this reduction  
24 in defendant's likely sentence is not unwarranted for the reasons  
25 discussed above. Particularly given the effect of the plea agreement  
26 on defendant's possible sentence and ultimate Guidelines range, the  
27 government concurs with the Probation Office's assessment that there  
28

1 are no identified factors warranting a departure or variance from the  
2 recommended 20-year consecutive sentence. (PSR ¶¶ 113, 114.)

3 Accordingly, a 20-year consecutive sentence is sufficient but  
4 not greater than necessary to achieve the objectives set forth in 18  
5 U.S.C. § 3553(a).

6  
7 **V. CONCLUSION**

8 Recognizing that the ultimate decision as to the appropriate  
9 sentence for defendant clearly rests with the Court, the parties have  
10 agreed that the statutory maximum of 20 years' imprisonment is an  
11 appropriate disposition in this case. (Plea Agreement ¶ 15.) The  
12 only issue reserved by the parties for argument is whether all 20  
13 years or only 15 years should run consecutive to the District of  
14 Idaho sentence. (Id.) For the reasons set forth above, as well as  
15 the advisory Guidelines which counsel that the sentence "shall be  
16 imposed to run consecutively to the undischarged term of  
17 imprisonment," U.S.S.G. § 5G1.3(a), the government respectfully  
18 requests that the Court impose a sentence of 20 years' imprisonment  
19 to run fully consecutive to the 25-year term of imprisonment  
20 previously imposed in the District of Idaho case, to be followed by a  
21 lifetime term of supervised release. The government respectfully  
22 submits that such a sentence is reasonable and appropriate, and is  
23 sufficient, but not greater than necessary, to achieve the sentencing  
24 goals of 18 U.S.C. § 3553(a).